Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of Equal Access and Interconnection Obligations Pertaining to Commercial Mobile Radio Services	CC Docket No. 94-54 RM-8012

TO: The Commission

REPLY COMMENTS OF AMERICAN PERSONAL COMMUNICATIONS

American Personal Communications ("APC")[1/] respectfully submits these reply comments in response to certain comments on the *Notice of Proposed Rulemaking and Notice of Inquiry* released on July 1, 1994 in the above-captioned proceeding.[2/]

Equal Access. The force of the industry comments in opposition to imposing across-the-board equal access obligations on CMRS providers is compelling.[3/] APC

1/ American PCS, L.P., d/b/a American Personal Communications ("APC"), a partnership in which APC, Inc. is the managing general partner and The Washington Post Company is an investor/limited partner.

2/ In the Matter of Equal Access and Interconnection Obligations Pertaining to Commercial Mobile Radio Services, CC Docket No. 94-54 (July 1, 1994).

3/ See, e.g., Comments of Cellular Telecommunications Industry Association, the Personal Communications Industry Association, ALLTEL Mobile Communications, Inc. at 2; Americell PA-3 Limited Partnership at 2-4; the American Mobile Telecommunications Association, Inc. at 6; American Personal Communications at 2-3; Michael B. Azeez at 3-4; Century Cellunet at 4-9; Comcast Corp. at 19-21; Cox Enterprises, Inc. at 13-15; Dakota Cellular, Inc. at 2-4; First Cellular of Maryland, Inc. at 2-4; Florida Cellular RSA Limited Partnership at 2-3; GTE Service Corp. at 2-4; Highland Cellular, Inc. at 2-3; Horizon Cellular Tel. at 1; Lake Huron Cellular Corp. at 1-4; Miscellco Communications, Inc. at 3-8; National Tel. Cooperative Ass'n at 2-5; New Par at 2-3; Nextel Communications, Inc. at 5-7; OneComm Corp. at 5-9; OPASTCO at 3-4; Pacific Telecom Cellular, Inc. at 1-4; Palmer Communications, Inc. at 2-7; Point Communications Co. at 2-3; Rural Cellular Ass'n at 4-8; Saco River Cellular Tel. Co. at 3-4; Small Market Cellular Operators at 2-6; SNET Mobility, Inc. at 11-12; The Southern Company at 7-9; Southwestern Bell Corporation at 19-31; Telephone & Data Systems, Inc. and United States Cellular Corp. at 3-17; Triad Cellular at 2-3; Union Tel. Co. at 2-3; Vanguard Cellular Systems at 3-17; Waterway Communications System, Inc. at 4-8; Western Wireless Corp. at 2-6.

believes strongly that PCS providers will voluntarily offer their subscribers the capability of equal access to be competitive with cellular. Market forces, not regulatory intervention, will drive virtually all CMRS providers to offer equal access. We thus believe that there is no need for the Commission to intervene and dictate how CMRS providers should implement equal access. Certain implementation measures -- including pre-subscription balloting -- would be enormously expensive to administer and of questionable utility for new services such as PCS that do not have existing customer bases. Equal access, in short, is an issue that can be more efficiently dealt with by the marketplace than by regulation.

We agree with Southwestern Bell that it serves the public interest for CMRS providers to be able to negotiate favorable rates with an interexchange carrier and offer those advantageous rates to their subscribers. Permitting licensees the freedom to make such marketplace arrangements will lower consumer costs and attract a greater number of subscribers to wireless carriers. For efficiency in traffic handling and subscribers costs, APC believes that PCS providers should not be prohibited from packaging a local-service offering with a long-distance offering (although APC does not currently plan such an offering, it does not rule out doing so if significant demand for such an arrangement exists). The ultimate choice in selecting a bundled local/long-distance offering or separate services would rest, of course, in the hands of the consumer. Permitting the industry freedom to package its offerings to respond to its customers' demands, rather than to serve a regulatory prescription, will permit the PCS to successfully enter the marketplace.

Requiring, by regulation, a particular equal-access arrangement may limit the ability of PCS providers to offer innovative long-distance services to their customers. These services undoubtedly would benefit consumers by decreasing prices and increasing competition. We believe that the only way in which PCS successfully can compete with the entrenched cellular industry -- which has an embedded customer base of almost 20,000,000 subscribers to date, a number which is likely to grow by at least another 10,000,000 by the time PCS licensees begin service -- is by flexibly and responsively serving its customers. The Commission should permit that flexibility by declining to mandate specific equal-access obligations.

Five interexchange carriers, not surprisingly, filed comments in favor of mandating equal-access obligations on all carriers.[4/] We doubt that imposition of equal-access would cause any true consumer benefits; in fact, the opposite is likely to occur. History shows that consumer prices for wireless services tend to rise, *not* to fall, when equal access is imposed. Wide-area, toll-free calling plans, which have proved to be important to cellular customers, would be impossible under a regulatory regime in which equal access is mandated. In addition, consumers would have *more* choices, rather than fewer choices, if CMRS providers continue to be able to negotiate specific packages in addition to permitting CMRS customers to have access to interexchange providers of their choice.

If, however, equal access is imposed across the board, the Commission should allow for flexibility in implementation for newly licensed PCS providers. Implementation

---

[4/] See Comments of Allnet Communications Services, Inc. at 2-4; AT&T Corp. at 3-8; LDDS Communications, Inc. at 10-11; MCI Telecommunications Corp.; WilTel, Inc. at 2-9.

using the local exchange carrier ("LEC") rules would be inappropriate because those rules assuming control over bottleneck facilities, a situation that is not present with PCS. Moreover, we urge the Commission to rule on this matter as quickly as possible so that PCS providers can plan for equal access, if it is imposed, in the construction and planning of their systems. This would avoid the more expensive process of retrofitting existing systems to provide equal access.

In addition, if equal access is to be imposed, local calling areas should be defined by the major trading area ("MTA") or basic trading area ("BTA") boundaries of the particular PCS license in question. Local access and transport areas ("LATAs") are an inappropriate relic of another regulatory regime and should not be overlayed onto the Commission's well-laid wireless plans.[5/] In the past, some wireless carriers have either passed on to consumers or absorbed the costs associated with the toll portion of mobile-originated intra-LATA calls to provide their subscribers with sensible local calling areas coextensive with licensing boundaries; these costs are needless and should be avoided by permitting local calling areas to be congruent with service-area boundaries. Moreover, if

---

[5/] The claim of Rand-McNally & Co. that the use of MTAs or BTAs for this purpose would be "copyright infringement" is frivolous. PCIA negotiated a blanket license with Rand-McNally for the use of MTAs and BTAs for PCS licensing not because there was any good-faith copyright issue -- there was not -- but to expedite and simplify the process of utilizing MTAs and BTAs. The Commission should not hesitate to use MTAs and BTAs for two reasons.

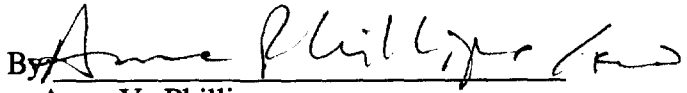
First, the use of MTAs and BTAs as an incident to further implementation of PCS by the Commission is covered by the blanket license. Second, there is no copyright issue here because Rand-McNally has no intellectual property in the *facts* of which geographic areas are contained in each MTA and each BTA -- one cannot claim copyright protection for *facts or ideas*, but only to particular *expressions* of facts or ideas. Rand-McNally thus cannot claim a copyright in the fact or idea that certain counties are grouped in certain BTAs and MTAs. *See BellSouth Advertising & Publishing Corp.* v. *Donnelley Information Publishing, Inc.*, 999 F.2d 1436, 1441 (11th Cir. 1993); *Kern River Gas Transmission Co.* v. *Coastal Corp.*, 899 F.2d 1458, 1464 (5th Cir. 1990) (finding certain maps not copyrightable); *Matthew Bender & Co.* v. *Kluwer Law Book Publishers*, 672 F. Supp. 107 (S.D.N.Y. 1987).

call jurisdiction responsibility is defined by LATA boundaries, then carriers will not be able to offer important MTA/BTA-wide local calling areas even if they are willing to absorb toll charges -- calls would have to be carried by an inter-LATA carrier. This incongruity would cause nothing but confusion to wireless customers.

Interconnection. Although many commenters suggest that there is not a need for PCS and cellular interconnection to be mandated by the Commission, we suggest the Commission consider the market power of cellular providers and the need for PCS providers to provide interoperability between cellular and PCS systems. As nascent PCS providers begin providing service, they will be able to offer competitive service only if subscribers have access to nationwide roaming capabilities on cellular systems. Unless the Commission mandates that cellular providers enter into fair and reasonable interconnection and roaming agreements with PCS providers, cellular carriers will be able to use their dominant market power to inhibit the development of PCS. Accordingly, cellular providers should be required to interconnect HLR and VLR databases so that roaming is technically feasible and to provide such interconnection within one year of the PCS provider's request.

Respectfully submitted,

AMERICAN PERSONAL COMMUNICATIONS

By: 

Anne V. Phillips
Vice President, External Affairs
AMERICAN PERSONAL COMMUNICATIONS
1025 Connecticut Avenue, N.W.
Washington, D.C. 20036
(202) 296-0001

October 13, 1994